



### PARTIES

2. Duracell US Operations, Inc. (“Duracell”) is a Delaware corporation with a place of business in Chicago, Illinois.

3. On information and belief, Voxlink Technology Co., Ltd. (“Voxlink”) is a Chinese company with a U.S. warehouse at 172 Trade Street, Lexington, Kentucky 40511.

### JURISDICTION

4. This action arises under the trademark laws of the United States, 15 U.S.C. §1051 *et seq.* This court has subject matter jurisdiction under 15 USC §1121 and 28 USC §1331.

5. This court has personal jurisdiction over Voxlink. Voxlink is promoting and selling the products at issue in this state and district.

### FACTS

6. Duracell is the world’s largest producer of batteries for consumer electronics products. It has been selling its batteries in copper-topped and copper-and-black color schemes for more than 50 years, and its color scheme has been federally registered on the Principal Register of the U.S. Patent and Trademark Office for more than 30 years. Duracell’s federal registrations include U.S. Registration Nos. 1,039,589, 1,144,787, and 1,152,937, all covering batteries in International Class 9. These registrations have long held “incontestable” status and serve as conclusive evidence that purchasers rely on the registered copper-and-black color scheme as a way to identify the source of a battery product.

7. Voxlink now sells a device that consumers can use to recharge the batteries for smartphones and other electronics products. Voxlink has configured the device, which it calls a “powerbank,” in a shape that combines the two traditional shapes of consumer batteries that are illustrated in Duracell’s incontestable registrations, and it uses the same metallic-topped color

scheme that consumers recognize as a Duracell trademark. In Voxlink's internet photography, the colors appear as copper and black:



8. The respective marks are very similar.

9. The respective products are similar in use, and consumers would expect products like Voxlink's powerbank to be made by battery makers like Duracell.

10. The respective products are both being offered across the United States and to the same class of purchasers.

11. The respective products are not high-priced items and are likely to be purchased on the spur of the moment and with little care.

12. Duracell's marks are strong and famous, and were famous long before Voxlink's use began.

#### COUNT 1 - Trademark Infringement

13. Voxlink is using in commerce a configuration that is a reproduction, counterfeit, copy, or colorable imitation of Duracell's registered marks.

14. Voxlink is using that configuration in connection with the sale, offering for sale, distribution, or advertising of goods.

15. Voxlink's use of that configuration on those goods is likely to cause confusion, or to cause mistake, or to deceive.

16. Voxlink's use damages Duracell and Duracell's trademarks, including U.S. Registration Nos. 1,039,589, 1,144,787, and 1,152,937.

17. Voxlink's use constitutes trademark infringement under 15 USC §1114(1)(a).

COUNT 2 - False Designation of Origin

18. Voxlink is using the configuration in commerce, on or in connection with goods.

19. Voxlink's use of that configuration is likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of its goods by Duracell.

20. Voxlink's use constitutes a false designation of origin under 15 USC §1125(a)(1).

COUNT 3 - Dilution

21. Voxlink began using the configuration after Duracell's marks became famous.

22. Voxlink's use is likely to cause dilution by blurring or dilution by tarnishment of Duracell's famous marks.

23. Voxlink's use violates 15 USC §1125(c).

PRAYER FOR RELIEF

Duracell requests the court:

A. To enter judgment that Voxlink has infringed Duracell's trademark rights in Duracell's copper-topped color scheme;

B. To enter judgment that Voxlink has violated 15 USC §1125(a)(1) and (c);

C. To preliminarily and permanently enjoin further violation of Duracell's trademark rights;

D. To freeze Voxlink's U.S. accounts and assets, including Voxlink's accounts with Amazon.com, Inc., PayPal, Inc., Western Union Holdings, Inc., and Money Gram International Inc., to ensure that any judgment is satisfied;

E. To order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of Voxlink that bear a reproduction, counterfeit, copy, or

colorable imitation of Duracell's registered marks, and all plates, molds, matrices, and other means of making the same, be delivered up and destroyed;

F. To order that Voxlink's products using the configuration shall not be admitted to entry at any customhouse of the United States;

G. To award damages adequate to compensate Duracell for Voxlink's infringement, including pre-judgment interest and costs; and

H. To award such other relief as is just and appropriate.

Respectfully submitted,

Duracell US Operations, Inc.

Dated: October 28, 2016

/s/ Craig A. Beaker

MARSHALL, GERSTEIN & BORUN LLP

Richard M. LaBarge (Reg. No. 6191261)

Craig A. Beaker (Reg. No. 6305442)

233 South Wacker Drive

6300 Willis Tower

Chicago, Illinois 60606-6357

Telephone: (312) 474-6300

Facsimile: (312) 474-0448